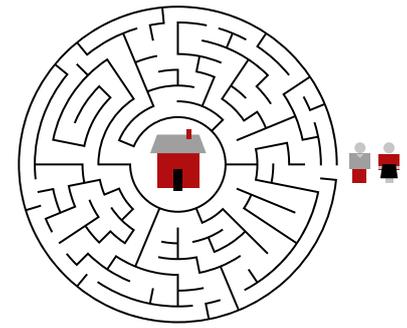


'This is my home':

Securing permanent status for long-term resident children and young people in the UK

June 2017

Executive summary



In 2012 it was estimated that there were 120,000 undocumented¹ children in the UK, 65,000 of whom were born here.² Many of these children are lived in the UK their whole lives, not realising that their immigration status is an issue until they try to work or access further education. A person who is undocumented in the UK cannot work, cannot access mainstream benefits, cannot go to college or university, cannot open a bank account or hold a driving licence. Despite these obvious barriers to settled life, there is little hard evidence of legal outcomes for these children. The data that is available is highly fragmented; however, what data there is suggests a large gap between the estimated number of undocumented children in the UK and the numbers who are either able to regularise their status or who leave the country.

There have been 1,560 grants of leave ('permission') to remain on the basis of long residence under the Immigration Rules to children between 2012 (when this leave was introduced) and 2015, and only 1,585 children were granted settlement on a discretionary basis or long residence in the same period. Government statistics record 6,160 children between 2012 and 2015 registering as British under section 1(4) of the British Nationality Act 1981: birth in the UK and continuous residence here for the first ten years of life. Only 8,189 children left the country in this period, either via forced removal or voluntarily. In total this is less than 15% of the number of those children who were estimated to have been undocumented in 2012, but of course that figure will not remain static – the increasingly complex rules and challenges in making applications will push more people into undocumented status every year (if for example, their application is refused and/or their leave comes to an end).

From these figures we can safely estimate that the number of undocumented children regularising their status each year would be in the low thousands at most, with the majority only securing temporary leave to remain and starting on the long road to permanence. This raises questions as to why undocumented children and young people who need to regularise their status and take steps towards permanence are not doing so. This paper explores the means by which children and young people are able to regularise their immigration status, and some of the barriers they face.

In order to achieve permanent status in the UK, an individual would need to identify the relevant part of the Immigration rules and legislation under which to apply, then make a full application, including the relevant legal arguments and supporting evidence, submitting this along with the application fee and immigration healthcare surcharge. Obstacles to doing this include:

- The complexity of law and policy in this area;
- Lack of awareness and understanding;
- The lack of free, quality legal representation; and
- Very high application fees, with very limited fee waivers.

In the UK today, a child might be able to regularise through a number of different routes, outlined in the companion paper, *Securing Permanent Status: existing legal routes for children and young people without leave to remain in the UK*.³ However, the options available have been made more restrictive in recent years. Changes to the Immigration Rules since 2012 and the removal of legal aid for immigration cases, under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, have made it harder and more onerous for children and young people who have lived in the UK for many years to regularise their status.

If their application is accepted, an undocumented child or young person usually would be granted just two and a half years' leave. They are then on a ten-year route to indefinite leave to remain, requiring five applications costing at least £8,269 in fees alone before they will have secure, permanent status. In this time, they effectively will be cut off from university, will not be able to claim any benefits, social housing or homelessness assistance. The need to repeatedly make detailed and expensive applications increases the possibility of their falling back into undocumented status. Despite it being accepted that they are an integrated member of their community who cannot be expected to leave the UK, they are not given the permanence needed to plan for their futures and contribute to the society that is their home.

1 An undocumented migrant is broadly defined as someone without permission (leave) to enter or remain in the UK.

2 N. Sigona and V. Hughes, *No way out, no way in: Irregular migrant children and families in the UK*, University of Oxford, 2012, at https://www.compas.ox.ac.uk/media/PR-2012-Undocumented_Migrant_Children.pdf

3 At http://www.childrenslegalcentre.com/wp-content/uploads/2017/06/Securing-permanent-status_legal-routes.pdf

The UN Convention on the Rights of the Child (UNCRC), which the Supreme Court has held imposes binding international legal obligations on the UK,⁴ clearly states that the rights within the Convention should be respected for all children within the state party's jurisdiction, 'without discrimination of any kind'. The UNCRC states that the best interests of the child must be a primary consideration,⁵ including in the government's exercise of its immigration control functions, in decision-making processes and that state parties must afford children the right to express their views in all matters affecting them – including in judicial and administrative proceedings.⁶

There has been progress in the protection of migrant children's rights in recent year. The UK lifted its reservation to the UN Convention on the Rights of the Child in 2008 and section 55 of the Borders, Citizenship and Immigration Act 2009, placed a statutory duty on the Home Office to safeguard and promote the welfare of children in the exercise of its functions. But the challenges facing children and young people with claims to regularise on the basis of long residence raise questions about whether the UK is meeting its legal obligations to children. The UK government has a sovereign right to manage immigration and control its borders, but the development of a more effective immigration system should include support for long-term resident children and young people to engage with immigration and nationality systems which are fair, efficient, affordable and accountable.

Recommendations for possible and positive policy changes include:

1. A shorter route to permanent status for long-resident children and young people and lower application fees.
2. Improve Home Office decision-making on children and young people's long residence cases in line with established law.
3. Change the policy on granting citizenship to long-term residents of the UK so that children are not arbitrarily excluded on 'good character'
4. The fee waiver policy should be amended so that eligibility is assessed on means and fee waivers are available for children and young people's indefinite leave to remain applications and citizenship applications.
5. Children in care are exempt from paying Home Office fees for immigration applications and appeal fees. These exemptions must be extended to citizenship applications, and should be expanded to apply to care leavers and those supported by the local authority.
6. Remove the profit element of the fee in children's citizenship by entitlement cases
7. An urgent review of children and young people's needs for legal services and at least the reinstatement of legal aid for separated children's immigration cases.
8. Home fee status and access to student finance for young people with certain types of time-limited leave.
9. Better information for social workers
10. Improved local authority practice through training and designated social care leads
11. Publishing more disaggregated data on children and young people's human rights and citizenship applications and outcomes.
12. Collaborative working at a local level to identify opportunities for good practice.

⁴ *ZH (Tanzania) v SSHD* [2011] UKSC 04, para 23

⁵ Article 3 of the UN Convention on the Rights of the Child 1989

⁶ Article 12 of the UN Convention on the Rights of the Child 1989